

Remarks

- 1) Applicant thanks the Examiner for his office action and hopes that this response will further the understanding of applicant's invention.
- 2) Claims 1-60 are pending in the application, and are subject to a restriction/election requirement. The office submitted that the inventions are distinct.
- 3) Certain informalities and grammatical errors were corrected in the claims.
- 4) Applicant respectfully traverses the Office restriction for the reasons stated below.
- 5) Regarding all of the different claim groups identified by the Office, 35 U.S.C. §121 specify: *"If two or more independent and distinct inventions are claimed in one application, the Director may require the application to be restricted to one of the inventions"*. 37 C.F.R. rule 1.142 show a similar demand: *"If two or more independent and distinct inventions are claimed in a single application, the examiner in an Office action will require the applicant in the reply to that action to elect an invention to which the claims will be restricted, this official action being called a requirement for restriction"*. (emphasis added) As the legislator saw fit to specify both requirements, the Office must show both in order to demand a restriction.

Applicant respectfully submits that the office failed to show the inventions are not only distinct, **but are also independent**, as required by the statute and the regulations. The claims of groups are clearly not independent from each other as all are directed various aspects of measuring viscosity at a known or controlled shear rate, and all are strongly connected in design, operation and effect. Therefore the Office have not met its obligation to show why restriction is proper under the both the statute and the rules.
- 6) Furthermore, independent claim 15 claims is a narrower embodiment of claim 1, further detailing the method of calculating the shear rate by utilizing a calculated penetration depth of the signal imparted to the liquid. Claim 15 and its dependent

claims, further detail one embodiment of calculating the penetration depth. In order to better clarify the direct relationship between the claims, applicant added the limitation of utilizing the frequency in the step of calculating the shear rate at which the viscosity measured was performed. In light of this amendment, applicant respectfully submits that the restriction requirement between claim groups I and II is moot, and requests that the restriction between those two groups will be reconsidered and withdrawn.

- 7) As originally filed, independent claim 44 claimed a method that required substantially successive use of the method of claim 1 to obtain the required characterization. In order to more clearly show this fact, claim 44 was amended to become a dependent claim of claim 1. In light of this amendment, applicant submits that the restriction requirement between claim groups I and IV is moot, and respectfully request that the restriction requirement between those two groups will be reconsidered and withdrawn.
- 8) Applicant respectfully submits that the Office did not provide reasons for insisting on restriction, as the alleged separate inventions of groups I-V are in the same classification, and the Office did not allege a separate status in the art or a different field of search. Therefore applicant submits that for that the restriction requirement is improper. Furthermore, the Office failed to show any burden on the Examiner, that will require or justify insisting upon restriction. See MPEP §806.05(c), §802.02 and §803.
- 9) For all the reasons stated above, applicant respectfully requests that the restriction will be reconsidered and withdrawn, as the Office did not meet several standards that are required, by statute, by the rules, and by the MPEP, for a restriction requirement. Should the Office insist on imposing a restriction, applicant respectfully requests that the Office will meet its burden, and provide a showing why it continues to insist on restriction, including a reasoned explanation of why the Office sees the inventions as independent, and a showing of reasons for

insisting why restriction is necessary, and a showing of the serious burden on the Examiner.

- 10) As required by 37 CFR §1.143, applicant provisionally elects, **under traverse**, the claims represented in group I, i.e. claims 1-14 for continued examination. In light of the amendment, and the reasons detailed above, applicant provisionally extends the election to claim groups II and IV as well.
- 11) Should the Examiner find any deficiency in this response or in the application, or should the Examiner believe for any reason, that an interview with applicant's agent may further the allowance and issuance of this application, the Examiner is kindly requested to contact Shalom Wertsberger at telephone (207) 799-9733.

Respectfully submitted



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